1905

FILE No. 28 OF 1904-05.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

PROCEEDINGS OF THE GENERAL AND REVENUE DEPARTMENT

LEGISLATION

SEPTEMBER

"A" Collection Serial Nos. 1—6

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1904-05

GENERAL AND REVENUE SECRETARIAT

LEGISLATION)

NOTES

File No. 28 of 1904-05.

Amendment of Section 10 (1) of the Mysore Merchandise Marks Regulation, I of 1892.

(1) From the Registrar of the Chief Court of Mysore, No. 5795—337. dated the 27th April 1905.

Forwards for the information of Government, copy of order passed by the Chief Court in Criminal Revision Cases Nos. 97, 118 and 119 in the matter of orders of conviction passed by the Amildar Magistrate of Nagamangala on the accused in Criminal Cases Nos. 48, 65 and 56 of 1904-05 on his file, for an offence under the Merchandise Marks Regulation.

1. The accused having exposed for sale in the fair at Nagamangala, coloured sadies of different kinds, panches and duppaties without having stamped on them their length as required by Section 10 of the abovesaid Regulation, they were convicted for an offence under the said Section and fined annas four, the goods so exposed being at the same time confiscated to Government.

2. The Chief Court observes that though the order is in accordance with the law, it is brought about by the absence of the qualifying phrases to " premises " in the said section as in Section 12 of the Government of India Act IV of 1889, on which Section 10 seems to have been based. In Section 12 of the Government of India Act, the word " premises " is followed by the phrase " which are a factory as defined in the Factories Act, 1881 " amended by Act XI of 1891 and on which our Factories Regulation is based. The omission of the qualifying phrase, it is stated, has had the effect of making the provision applicable to the indigenous manufacture of every description of cotton fabric with hand-looms and subjecting poor weavers to the provisions which are intended to be enforced in the case of wholesale manufactures.

3. The chief Court has placed us under obligations in pointing out the very serious omission of certain qualifying words in Section 10 (1) of the Mysore Merchandise Marks Regulation. This Regulation was drafted in 1891 at a time when we had no law to regulate labor in factories corresponding to the British Indian Law on the subject, our Regulation IV of 1892 having been passed only in December 1892. Hence evidently the omission, which has had certain untoward results, as explained in the judgment of the Chief Court.

4. A reference to para 4 of the Government Order reviewing the District reports on the working of the Merchandise Marks Regulation will show that the matter had attracted attention on its own merits apart from a defect in the law, and that Government called for the opinions of local officers before taking action. This is now unnecessary, as the matter can, and ought to be, set right by an amendment of Section 10 (1) of the Regulation. A Draft Regulation for this purpose is put up; also a letter to the First Assistant Resident explaining the objects and reasons of the measure.

5. Till that amending Regulation is promulgated, Criminal Courts have to be instructed to treat Section 10 as referring only to premises which are factories. Fortunately, there is authority for issuing such instructions in Section 13 (1). A draft notification under this authority is accordingly submitted.

6. As regards the poor Holeya weavers on whom the Courts had no option but to inflict a sentence of a nominal fine and confiscation of the goods, fairness and expediency demand that the sentence should be remitted in entirety. An order directing such remission and disposing of the question generally, is put up.

7. There are thus four drafts for approval.

K. S. CHENDRASEKHARA AIYAR.
3-5-05.

8. Drafts submitted to the Dewan Saheb through the 1st and 2nd Councillors, this being a Council matter.

B. K. VENKATA VARADA IYENGAR.
4-5-05.

9. We had no Factories Regulation in Mysore when we drafted the Merchandise Marks Regulation. Hence this unfortunate omission, which, I agree, should be rectified at once provisionally by a notification, and as early as possible permanently, by an amending Regulation. The Indian Act has not been put up, but the wording thereof has been quoted in several papers in this file. This is an urgent matter and I therefore proceed to deal with it without calling for a copy of that Act. The several drafts put up are suitable and may be passed. The object of the notification is simply to provide a temporary remedy and not to obviate the necessity of legislating on the subject. Hence my suggestion that the words "preceding legislation on the subject" be inserted in the notification.

I have since found in File I of 1892 a copy in which have been made the adaptations suited to Mysore.
C. S.

C. S.
8-5-05.

10. The amendment now proposed as pointed out by the Chief Court seems absolutely necessary. The law as it now stands works hardship on the poor weavers in the State.

C. M.
9-5-05.

Submitted to His Highness.

11. The order of the Chief Court and the enclosed draft letter to the Residency explain the necessity which has arisen for amending this Regulation. The omission of the words "which are a factory as defined in the Mysore Factory Regulation, 1892" in Section 10 of Regulation I of 1892, styled Mysore Merchandise Marks Regulation, is unfortunate and has led to the prosecution and conviction of a few weavers in Nagamangala. The punishment which is nominal of four annas fine has to be remitted and the Amending Regulation and the draft letter to the Residency have to be approved. This may graciously be done.

P. N. K.
22-5-05.

Order.

12. Draft letter and Government Order approved.

K. R. W.
His Highness the Maharaja of Mysore.
25-5-05.

13. Issue all but the notification, about which I have some doubts.

P. N. K.
28-5-05.

(2) Proceedings No. 3482-92, dated the 31st May 1905, to the Registrar of the Chief Court, the District Magistrates, the Director of Statistics and the Inspector-General of Police.

Agrees in the opinion of the Judges that the omission of certain words from Section 10 (1) of Regulation I of 1892, has had the effect of bringing poor hand-loom weavers under the provisions of the law which was intended for the wholesale manufacturers, and proposes to remedy the defect by an amending Regulation, and remits the whole of the punishment awarded to the accused persons in the cases under question.

(3) Letter No. Political, 986, dated the 31st May 1905, to the First Assistant Resident.

Forwards, for favor of the consent of the Government of India being obtained, the Draft of a Regulation to amend Section 10(1) of the Merchandise Marks Regulation, by inserting the words "which are a factory as defined in the Mysore Factories Regulation, 1892" after the word "premises" where it first occurs in that section.

14. I discussed with the Dewan the question of the legality of the proposed notification. He directs that District Magistrates may be asked to report to Government on all pending cases under Section 10 (1) and those that may be instituted before the Draft Regulation now before the Government of India is brought into force

15. A draft is accordingly put up.

K. S. CHANDRASEKHARA AIYAR.
17-6-05.

16. Passed.

B. K. VENKATA VARADA IYENGAR.
17-6-05.

(4) To District Magistrates and Deputy Commissioners of Districts and the Inspector General of Police, No. J. 3654-62—Leg. 28-4, dated the 20th June 1905.

Requests them to report to Government, with full particulars of the facts, all cases under Section 10 of the Merchandise Marks Regulation now pending or that may be instituted before the proposed amendment thereof is brought into force.

(5) From the First Assistant to the Hon'ble the Resident in Mysore, No. 4840, dated the 29th August 1905.

States that the Government of India have no objection to the proposed legislation.

17. The assent of His Highness the Maharaja has now to be obtained for the promulgation of the Regulation as law. Submitted with a fair copy of the draft.

T. K. S.
31-8-05.

K. S. CHANDRA SEKHARA AIYAR.
31-8-05.

S. N.
31-8-05.

Submitted to His Highness.

18. The Regulation may be ordered to be published.

P. N. K.
1-9-05.

Order.

19. Sanctioned.

K. R. W.
His Highness the Maharaja of Mysore,
5-9-05.

20. Order accordingly.

P. N. K.
6-9-05

REGULATION No. V OF 1905.

(Passed on the 5th day of September 1905.)

A Regulation to amend the Mysore Merchandise Marks Regulation, I of 1892.

Preamble. Whereas it is expedient to amend the Mysore Merchandise Marks Regulation, 1892, His Highness the Maharaja is pleased to enact as follows :—

Insertion of certain words in Section 10 (1) of Regulation I of 1892.

1. In Sub-section (1) of Section 10 of the Mysore Merchandise Marks Regulation, 1892, after the word "premises" where it first occurs there shall be inserted the words "which are a factory as defined in the Mysore Factories Regulation, 1892.

P. N. K.,
Dewan of Mysore.

Draft submitted.

To the Compiler, Mysore Gazette, No. J. 804—Leg. 28 of 04-6, dated the 13th September 1905.

Orders that the Regulation to amend the Mysore Merchandise Marks Regulation, I of 1892, be promulgated, and forwards a copy of Regulation V of 1905 for publication in three successive issues of the Gazette.

Amendment of Section 10 (1) of the Mysore Merchandise Marks Regulation.

FILE NO. 28 OF 1905-06.

Letter No. 5795—337, dated Bangalore, 27th April 1905, from V. A. Rajaratna Mudaliar, Esq., Registrar, Chief Court of Mysore, to B. K. Venkata Varada Iyengar, Esq Secretary to Government, General and Revenue Department.

I have the honor to forward herewith for the information of Government copy of order passed in Criminal Revision Cases Nos. 97-118 and 119 of 1904-05 on the file of this Court. Serial No. 1.

[ENCLOSURE TO THE ABOVE.]

IN THE CHIEF COURT OF MYSORE AT BANGALORE, SATURDAY THE 18TH DAY OF MARCH 1905.

Present.

Mr. Justice A. E. Staley, Chief Judge, and
Mr. Justice A. Rangasami Iyengar, Judge.

Criminal Revision Cases Nos. 97, 118 and 119 of 1904-05.

In the matter of a reference* made by the District Magistrate of Mysore in the cases of Kulla and four others, Mariya and Hombale, accused in Criminal Cases Nos. 48, 65 and 56 of 1904-05, on the file of the Amildar and Second Class Magistrate of Nagamangala Taluk.

*Proceedings dated 25th December 1904 and docket No. 2527, dated 21st February 1905.

Order.

The District Magistrate of Mysore in his proceedings dated 25th December 1904, brings to notice the judgment of the Taluk Magistrate of Nagamangala in Criminal Case No. 48 of 1904-05, convicting four Holayars of the Nagamangala and Mandya Taluks under Section 10 of the Mysore Merchandise Marks Regulation. The judgment recites that these accused exposed for sale in the fair at Nagamangala coloured sarries of different kinds, panches and dupati, without having stamped on them their length as required in the said section, that these cloths came under the description of piece-goods as defined in Notification No. 7500—Legis. 93, dated 29th December 1899, issued under Section 16 of the Regulation, that the accused were guilty of violating the provisions of Section 10 of the said Regulation and that "though it was hard on the poor accused," they had to be convicted and punished under para 2 of the said section. In the end, the Magistrate inflicted on them, a fine of annas four each and directed that the goods should be forfeited to Government.

The conviction and sentence seem to be quite in accordance with the provisions of Section 10. It is, however, observed that Section 12 of the Government of India Act, IV of 1889, on which this section is based, contains the following words to qualify the word *premises, viz.*, "which are a factory as defined in the Factories Act, 1881." This Act was subsequently amended by the Indian Factories Act, XI of 1891, and our Regulation IV of 1892 is based on it. In this, the word 'Factory' means premises where any process is carried on for manufacturing any article or part of article with the aid of steam, water or other mechanical power and where, not less than fifty persons are, on any day, simultaneously employed.

The omission of this material definition of the word 'premises' has had the effect of making the Regulation applicable to the indigenous manufacture of every description of cotton fabric with hand-looms and subjecting the poor weavers to the provisionsintended to be enforced in the case of wholesale manufacturers. As the Courts can only apply the law as it stands, it is not competent for this Court to interfere with the conviction and sentence which are in accordance with the Regulation. A copy of these proceedings will be sent to Government for information.

Proceedings No. J. 3492-92—Legis. 28-2, dated 31st May 1905, to the Registrar of the Chief Court, to all Deputy Commissioners and the District Magistrates, the Director of Statistics and Inspector-General of Police.

Letter No. 5795—337, dated the 27th April 1905, from the Registrar of the Chief Court of Mysore, forwarding for the information of Government a copy of Chief Court's Order in Criminal Revision Cases Nos. 97, 118 and 119 of 1904-05. Serial No. 2

Amendment of Section 10 (1) of the Mysore Merchandise Marks Regulation.

2. Para 4 of Government Order No. J. 1633-41—Legis. 16-9, dated the 21st December 1904, calling for the opinions of all the Deputy Commissioners and of the Director of Statistics in regard to the exemption of piece-goods manufactured by poor and ignorant local weavers from the provision of law which requires that piece-goods should be stamped in English numerals with the length thereof.

ORDER THEREON.—The Chief Court of Mysore have, in their order read above, pointed out the omission in Section 10 (1) of the Mysore Merchandise Marks Regulation, I of 1892, of the qualifying words "which are a factory as defined in the Mysore Factories Regulation, 1892," which should have followed the word "premises" and which are to be found in the corresponding Indian Act IV of 1889. The effect of the omission, as observed by the Judges, has been "to make the Regulation applicable to the indigenous manufacture of every description of cotton fabric with hand-looms and subject the poor weavers to the provisions intended to be enforced in the case of wholesale manufacturers." Steps will be taken to remedy the defect by means of an amending Regulation for which the sanction of the Government of India will be applied for.

2. The Government of His Highness the Maharaja are pleased, under Section 401 of the Criminal Procedure Code, to remit the whole of the punishment (including the confiscation of the goods) inflicted on the accused persons in Criminal Cases Nos. 48, 65 and 56 of 1904-05, on the file of the Amildar and Second Class Magistrate of the Nagamangala Taluk.

3. This Order disposes of the question reserved for consideration in para 4 of Government Order No. J. 1633-41—Legis. 16-9, dated the 21st November 1904.

To the First Assistant to the Hon'ble the Resident in Mysore, No. Pol. 986—Enc. 2, dated 31st May 1905.

Serial No. 3.

I am directed to forward, for favor of the consent of the Government of India being obtained, a Draft Regulation to amend Section 10 (1) of the Mysore Merchandise Marks Regulation, I of 1892.

2. This Regulation is based on the corresponding Indian Act IV of 1889; but in adopting the provision contained in Section 12 (1) of the latter, the very material words "which are a factory as defined in the Indian Factories Act, 1881," qualifying the word "premises," were omitted in Section 10 (1) of the Mysore Regulation, apparently because a Regulation in regard to Factories had not then been passed in Mysore. The effect of the omission has been to make the provision in question applicable to piece-goods manufactured in premises of any description, instead of to those manufactured in factories only, and thereby to cause hardship to indigenous weavers who manufacture goods on a small scale. The point has been well explained in a recent order of the Chief Court of Mysore, a copy of which is enclosed. The matter also came under the notice of this Government in connection with the district reports on the working of the Merchandise Marks Regulation. It is therefore proposed to rectify the omission by the insertion of the necessary qualifying words in Section 10 (1) of the said Regulation.

[ENCLOSURE TO THE ABOVE.]

Draft of a Regulation to amend the Mysore Merchandise Marks Regulation, I of 1892.

WHEREAS it is expedient to amend the Mysore Merchandise Marks Regulation, 1892, His Highness the Maharaja is pleased to enact as follows:—

Preamble.

1. In sub-section (1) of Section 10 of the Mysore Merchandise Marks Regulation, 1892, after the word "premises" where it first occurs there shall be inserted the words "which are a factory as defined in the Mysore Factories Regulation, 1892."

Insertion of certain words in Section 10 (1) of Regulation I of 1892.

To the Registrar of the Chief Court of Mysore, the Director of Statistics, the District Magistrates and Deputy Commissioners of Districts and the Inspector-General of Police, No. J. 3654-62—Legis. 28-4, dated 20th June 1905.

OFFICIAL MEMORANDUM.

Serial No. 4.

In drawing the attention of the District Magistrates to Government Order No. J. 3482-92—Leg. 28-2, dated the 31st May 1905, regarding the proposed amendment of Section 10 (1) of the Mysore Merchandise Regulation, with a view to limiting its application to piece-goods manufactured in premises which are factories within the meaning of the Factories Regulation, the undersigned is directed to request that all cases under the Section in question now pending or that may be instituted before the amending legislation is brought into force, may be reported to Government with full particulars of the facts.

Amendment of Section 10 (1) of the Mysore Merchandise Marks Regulation.

Letter No. 4849, dated 29th August 1905, from R. C. H. Moss King, Esq. I.C.S., First Assistant to the Resident in Mysore. to the Dewan of Mysore.

With reference to Mr. Venkata Varada Iyengar's letter Pol. No. 986 dated the 31st May 1905, forwarding for the approval of the Government of India the Draft of a Regulation to amend Section 10 (1) of the Mysore Merchandise Marks Regulation I of 1892, I am directed to say that the Government of India have no objection to the proposed legislation. **Serial No. 5.**

No. J. 804—Legis. 28-6-04, dated 13th September 1905.

ORDER THEREON—Ordered that the Regulation to amend the Mysore Merchandise Marks Regulation I of 1892, which received the assent of His Highness the Maharaja on the 5th day of September 1905. be promulgated. **Serial No. 6.**

—The Compiler, *Mysore Gazette*, with a copy of Regulation No. V of 1905 for publication in three successive issues of Part III of the Gazette and for supply of fifty spare copies to this office.
The Registrar of the Chief Court of Mysore.
The District Magistrates and Deputy Commissioners of Districts.
The Director of Statistics.
The Inspector-General of Police.